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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/960,114	09/21/2001	Kenneth B. Higgins	5113B	5752

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Milliken & Company  
P.O. Box 1927  
Spartanburg, SC 29304

EXAMINER

JUSKA, CHERYL ANN

ART UNIT PAPER NUMBER

1771

DATE MAILED: 05/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/960,114

Applicant(s)

HIGGINS ET AL.

Examiner

Cheryl Juska

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 27 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 88,90-128,130-139 and 144-148 is/are pending in the application.
- 4a) Of the above claim(s) 133,137,139 and 144-148 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 88,90-128,130-132,134-136 and 138 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 2/02, 4/02, & 5/02
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election with traverse of Group I, claims 88, 90-128, 130-132, 134-136, and 138, on February 27, 2004, is acknowledged. Applicant traverses on the grounds that the inventions of Groups III, IV, and VI have the same classification as Group I and thus should be examined therewith. Although the classification is the same the inventions of Group I, III, IV, and VI are distinct inventions (i.e., unrelated embodiments of carpet articles). In other words, the four groups do not share an inventive feature (e.g., the rebond foam layer of Group I). Therefore, examination of all four inventive carpet articles would be burdensome to the examiner.

2. The requirement is still deemed proper and is therefore made FINAL.

3. Claims 133, 137, 139, and 144-148 are withdrawn as non-elected. Claims 1-87, 89, 129, and 140-143 are cancelled. Thus, the claims being examined are the elected claims 88, 90-128, 130-132, 134-136, and 138.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 88, 90-128, 130-132, 134-136, and 138 are rejected under 35 U.S.C. 103(a) as being unpatentable over US 4,522,857 issued to HIGGINS in view of 5,610,207 issued to DE SIMONE et al.

HIGGINS teaches a carpet or carpet tile comprising a tufted or bonded primary carpet, an adhesive layer having a reinforcing layer embedded therein, and a polyurethane foam cushion backing (col. 1, lines 5-7 and lines 26-33 and col. 2, lines 1-6). The primary carpet backing may also have a pre-coat latex, urethane, PVC, or acrylic (i.e., hot melt adhesive) layer (col. 1, lines 44-47). The adhesive layer may be a polyolefin or other thermoplastic hot melt material and is present in an amount ranging from 10-70 oz/yd<sup>2</sup> (col. 1, lines 48-52). The reinforcing layer may be a fiberglass scrim or a woven or nonwoven material made of polyester, nylon, or polypropylene (col. 1, lines 52-55). The foam layer may be 2.54-25.4 mm thick with a density of about 10-60 oz/yd<sup>2</sup> (col. 2, lines 1-6).

Thus, HIGGINS teaches the present invention with the exception that the foam layer is a rebond foam layer. However, rebond foam carpet backings are known in the art as is evidenced by DE SIMONE. DE SIMONE teaches a rebond polyurethane foam product which is suited for a carpet backing (abstract and col. 2, lines 34-45). The rebond foam is made from recycled scrap or waste polyurethane foam that is reduced to particles of 0.5 to 5 mm in size (col. 2, line 65-col. 3, line 21). The foam particles are mixed with a liquid polyurethane binder, consolidated under pressure, and cured to bond the foam particles together (col. 1, line 62-col. 2, line 3). The binder is present in the range of 10-40% by weight (col. 5, lines 61-67) and may contain additives such as a catalysts, fire retardants, viscosity modifiers, and heat and light stabilizers (col. 4, lines 61-65).

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Thus, it would have been obvious to one skilled in the art to substitute a rebond foam layer, as taught by DE SIMONE, for the foam layer of HIGGINS. Motivation to do so would be the advantages of said rebond foam, such as good cushioning properties at low cost (i.e., recycled material).

With respect to the claimed properties of internal tear strength, appearance retention rating, compressibility, hexapod rating, Gmax, air permeability, caster chair rating, EN 1307 rating, and Herzog walking comfort rating, it is argued that these property limitations would be met by the combination of cited prior art. Specifically, the combination of art teaches the claimed chemical and structural features of the invention. As such, the properties that result from said chemistry and structure must also be present. The burden is upon applicant to prove otherwise.

With respect to the open cell foam limitations of claims 95, 96, 105, 130, and 138, it is argued that said limitations are obvious over the prior art even though said prior art does not explicitly teach open cell foams. Specifically, it would have been obvious for one skilled in the art to choose an open cell foam for the rebond foam of DE SIMONE since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use. *In re Leshin*, 125 USPQ 416.

Therefore, claims 88, 90-128, 130-132, 134-136, and 138 are rejected as being obvious over the cited prior art.

### ***Conclusion***

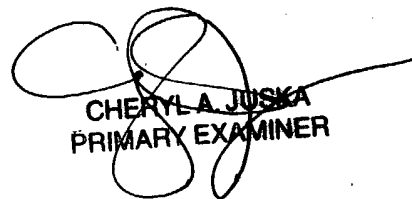
6. Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to Cheryl Juska whose telephone number is 571-272-1477. The examiner can normally be reached on Monday-Friday 10am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached at 571-272-1478. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CHERYL A. JUSKA  
PRIMARY EXAMINER

cj  
April 18, 2004